

1 province of Ms. Marshall?

2 A Yes, unless she felt there was some reason to bring it
3 to my attention.

4 Q Okay. And do you have any specific recollection
5 relative to this pleading or this document, whether that was
6 done here?

7 A I do not believe so. I do remember being told at some
8 point in the process that Dixie's records were very
9 fragmentary and very incomplete. I also remember being told
10 that the reason that Dixie's records were incomplete was
11 because the station had at some point in the relatively recent
12 past ^{purchase} a computer system, put their personnel records on the
13 computer and had discarded all of the previous records.

14 So the substance of this opposition, I haven't read it
15 but my -- I, I believe if I did read it what I would find is
16 that the substance is largely an anecdotal type response as
17 opposed to a statistical sort of response to the petition to
18 deny. And the reason for that, it was my understanding, was
19 that the station lacked records to give a, a statistical
20 refutation of the charges.

21 Q All right. Let's, let's turn to page 4, specifically
22 footnote 5. And, if you would, just read that to yourself.

23 A Okay. All right, I've read it.

24 Q Okay. Now, with respect to the, you know, change in
25 information from 16 new hires to 12 new hires, do you recall

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1 having any role whatsoever in, you know, checking the factual
2 accuracy of what appears here?

3 A I don't have any recollection and I doubt that I would
4 have played any such role, other than just my general
5 admonition that I told you about earlier, that to the extent
6 information deviates from what was said in the renewal
7 application that we disclose to the Commission and an ^{that}
8 explanation for the deviation be provided. I notice that this
9 footnote corresponds to that, that procedure.

10 Q All right. There's another point I'd like you to check
11 with respect to the EEO program, and it's probably buried in
12 that pile that you've got in front of you there. Okay.
13 Looking at the, you know, new hire information, and I think
14 it's on the fourth page --

15 A I see it.

16 Q All right. Now, there are two sections noted there,
17 one for overall hires and one for --

18 MR. SCHATTENFIELD: Which, which report are you looking
19 at?

20 MR. SHOOK: The 1988 EEO, EEO program.

21 MR. SCHATTENFIELD: 396?

22 MR. SHOOK: The Form 396.

23 BY MR. SHOOK:

24 Q Okay. Is there anything about the numbers there that
25 catches your attention?

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1 A No. I see the numbers.

2 Q All right. Do you notice that for overall hires I
3 believe the number 16, you know, overall hires is noted, but
4 when you go to the upper four job categories it's two?

5 A That is correct.

6 Q All right. Now, it's your understanding -- Or is it
7 your understanding from your experience that most radio
8 stations categorize virtually all of their employees as being
9 employed in the upper four job categories?

10 A That is correct as a general matter, yes. Most --

11 Q And --

12 A Most stations, the only person in the other than top
13 four would be a secretarial position.

14 Q All right. And so, looking at this, the suggestion is
15 that virtually all of their hires were secretarial in nature,
16 if one --

17 A At least in the -- At least in job categories other
18 than the upper four.

19 Q Right, if one took that at face value.

1 have even been as carefully as I looked at it now. And I, I
2 don't think I noticed that.

3 Q All right. In other words, you don't recall that
4 triggering any, you know --

5 A I do not recall it --

6 Q -- question to Dixie?

7 A -- and the fact that I just sat here and it didn't
8 trigger anything, it probably wouldn't have at the time,
9 because I wouldn't have even looked at it as carefully as I
10 did now.

11 Q All right. But you would agree that this is an unusual
12 situation for a radio station?

13 A Now that you have pointed it out, I agree with that.

14 Q Assuming it to be accurate?

15 A Assuming that this is an accurate figure, yes, sir.

16 Q All right. Now, with respect to the opposition to the
17 petition, I'd like to refer you to footnote 10 which begins on
18 page 10 and continues over to page 11. If you could read that
19 to yourself, please.

20 (Pause.)

21 WITNESS: I've read it.

22 BY MR. SHOOK:

23 Q Okay. Now, the focus of my questions are going to be
24 on those persons who, whose names appear on page 11 in that
25 footnote. First of all, with respect to Messrs. Tate, Hill

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1 and Patton, it's stated here that they were left off the 1983
2 report because of oversight. Did you happen to have any
3 conversations with Mr. Bramlett on this subject, as to why
4 three, you know, black male employees would not have been
5 noted on the station's 1983 annual employment report?

6 A I don't recall any such conversation and I don't
7 believe that any such conversation ever took place.

8 Q Okay. Do you recall discussing the matter with
9 Ms. Marshall?

10 A I do not recall discussing it with her.

11 Q Okay.

12 A It, it is likely that she mentioned that fact to me
13 while she was preparing the opposition, but if she did, it was
14 simply in passing.

15 Q In your experience, this is a rather significant
16 oversight, though, is it not?

17 A Yes, it is.

18 Q Considering the size of the station and the number of
19 employees that we're talking about here?

20 A Yes.

21 Q All right. Relative to Ms. Stevenson, whose name
22 appears about three, three lines after that, do you recall
23 having any conversation with Mr. Bramlett as to why she was
24 left off?

25 A I recall no such conversation.

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1 Q Do you recall any such conversations with Ms. Marshall?

2 A No, I do not recall any such conversations.

3 Q All right, would it be fair to state that your
4 understanding at -- in April of 1989, when this opposition is
5 being submitted, that the station has been given a bum rap in
6 the sense that he had had black employees and simply forgot to
7 tell the Commission about them in its annual employment
8 reports?

9 A My sense of the thing at the time of the situation,
10 when this opposition was filed, is that the station had been
11 sloppy in its record keeping, but that they were not guilty of
12 discrimination, certainly. And that they had been, in fact,
13 affirmative in their recruitment efforts.

14 Q Okay. And was that understanding essentially derived
15 from the opposition itself or would there have been any other
16 basis for that understanding?

17 A It was derived from the facts recited in the opposition
18 itself that, that Ms. Marshall relayed to me either through

1 when the petition first came in and I introduced him to, to
2 Ms. Marshall for the preparation of the petition he was very
3 upset that a petition had been filed against him.

4 Q Okay. Do you recall him expressing any reasons as to,
5 you know, why he was upset, other than the fact that he was
6 being petitioned against?

7 A He didn't think the petition was justified.

8 Q Okay. And did he explain in any way why he thought
9 that?

10 A That I don't recall. I, I remember speaking to him,
11 and I believe it was in either in the -- There may have been
12 two telephone calls. I may have had an initial call with him,
13 just to say that there is a petition, we need to deal with it,
14 look at it, let's set up a time to talk. And then the
15 subsequent time was when I would have introduced Susan.

16 It may have been only one conversation. I don't
17 remember that. But I know that after he got the petition he
18 was upset and he felt, as you put it, that it was a bum rap.

19 Q With -- During, during that conversation or immediately
20 prior to that conversation, would it have been your practice
21 to look at your file to see what if any correspondence there
22 had been between yourself and the client in order to, you
23 know, give you a little bit of background information other
24 than simply what you would have, you know, I mean, if you'd
25 just picked up the phone and called him and said, you know,

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1 hey, we've got this petition?

2 A No, I wouldn't have done that.

3 Q Okay. In other words, what I'm, what I'm driving at in
4 kind of a round-about way is whether you would have made any
5 reference to your December 1988 letter when -- I believe it's,
6 it's the top letter there.

7 A I'm looking for the date, looking for something else.
8 The petition came in in March 1st of 1989. That's like almost
9 four months after the December letter went out. I, at that
10 time, had probably forgotten even writing the December letter.

11 Q All right. In other words, you wouldn't have gone back
12 to the file and said, you know, by the way, do you remember,
13 J. Mack, that I wrote this letter in December and I told you
14 that we're looking at, you know, a possible problem here and,
15 you know, you should get some mitigating information ready,
16 did you do that?

17 A That would not have been my style in dealing with the
18 client, to say I told you so and now you're in trouble and
19 it's -- No, I wouldn't have done that.

20 Q All right. And you don't recall Mr. Bramlett having
21 made any reference to the letter, the December letter, and
22 said, you know, by the way, it was great that you sent me that
23 letter because I've been busy preparing this information?

24 A I don't remember any, any statement to that effect.

25 Q All right. Now, moving on to Attachment D, do you

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1 recall having any role in the preparation or submission of the
2 supplement to the opposition?

3 MR. SCHATTENFIELD: Can I have a date, please, because
4 I don't have an Attachment D? I just have documents of --

5 MR. SHOOK: Okay, this is an April 17, 1989, supplement
6 to opposition to petition to deny.

7 WITNESS: I don't recall any, any involvement with
8 this, and it's unlikely that I had any. All that this
9 document does is simply forward executed, that is signed,
10 copies of the supporting statements that were attached to the
11 opposition that had not yet been received when the opposition
12 was filed.

13 I would have seen those statements when the opposition
14 was filed and would have reviewed them at that time. The
15 strong likelihood here is that when the signed documents were
16 received by Ms. Marshall she simply filed it with the
17 Commission. And I note on the second page I did not sign this
18 document, even though my name appears there. It's signed
19 Daniel F. Van Horn with the initials SAM. That is not my
20 handwriting, it is Ms. Marshall's handwriting.

21 Q All right. With respect to the attachments themselves
22 or the exhibits or -- I guess it's exhibits here, what if any
23 role would you have had in the preparation of the statements
24 that were made by Nat Tate and by J. Mack Bramlett?

25 A Virtually none. I may have discussed them with

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1 Ms. Marshall or looked at them before she sent them out to be
2 signed, but I didn't have any conversation with either
3 Mr. Bramlett or Mr. Tate about either of these statements.

4 Q All right. Now, turning back to Attachment B,
5 Attachment B is a July 3, 1989, letter to J. Mack Bramlett
6 from Glen A. Wolf. Now, there's a CC here to Daniel
7 Van Horn. Do you recall receiving this document?

8 A I do not have a specific recollection of receiving this
9 document, but since it is CC'd to me, I presume that I did.

10 Q All right. Do you recall having received documents of
11 this nature at or before the time, July 3, 1989? In other
12 words, documents from the EEO Branch that said dear client,
13 you know, please supply us with certain information.

14 A Yes. Again, I -- if you would ask me to recite which

15 [REDACTED]

1 | A | Correct, yes.

2 | O | All right. Now, what would have been your normal

1 | would it have been your practice to have given this letter to
2 | Ms. Marshall and say well, Susan, this is your baby, you call
3 | him up and you talk to him and tell him what's going on?

4 | A It's conceivable that I could have done that, or I
5 | might have just made the call myself and said something to the
6 | effect that we've gotten a letter from the Commission, you and
7 | Susan will have to respond to it. Again, it could have gone
8 | either way.

9 | Q In other words, you don't have --

10 | A I may have called.

11 | Q -- you don't recall right now doing anything like that
12 | with respect to this letter? That is, either directly calling
13 | Mr. Bramlett himself or giving it to Susan and saying, Susan,
14 | you call him?

15 | A I, I don't recall which way it would have gone --

16 | Q All right.

17 | A -- with respect to this letter, but there would have
18 | been some follow-up call --

19 | Q The odds are one or the other?

20 | A -- by one of us. One of us, yes.

21 | Q All right. Now, in terms of the nature of the call,
22 | what would have been the normal practice for trying to tell a
23 | client what it is they're going to get, because the client can
24 | get this and maybe you know what it means, but the client is
25 | mystified?

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1 A Well, there's, there's a, a little bit of a distinction
2 you need to make. You're asking about the normal practice or
3 the practice in a case of this sort. If you'll recall, in
4 response to one of your earlier questions, I said that my
5 understanding was that the station didn't have specific
6 records, that those had been lost or destroyed after the
7 switch to the computerized personnel system.

8 This letter asks for very specific statistical
9 information which it was my understanding the stations did not
10 possess. And, consequently, the nature of the call would have
11 been along the lines of saying we've received a letter from
12 the Commission, is there anything else that we can tell the
13 Commission that we haven't already put into the opposition.

14 And if we didn't have records before, then presumably
15 we don't have them now. And, therefore, is there anything
16 else that we can say in response to this?

17 Q Was there any sense or understanding conveyed with a
18 letter of this nature that what the Commission is looking for
19 is a way to compare overall hiring and minority hiring, as
20 well as what efforts, if any, were made in the normal course
21 to fill jobs as they became available?

22 A That, that's obviously the thrust of, of the letter, is
23 to obtain applicant flow information and information about
24 referral sources, ^{race} racial and gender of applicants. And
25 those -- That was information which, in the case of these

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1 stations, I believed had been thrown away.

2 Q All right. Now, going back to the opposition, and it
3 may be that I'm overlooking it, so if there's something in
4 here that you can point me to, I'd appreciate it. But having,
5 having read through this, I don't have any specific
6 recollection that there's any statement in here that alerts
7 the Commission that employment information doesn't exist or
8 has been thrown away or --

9 A That, that may be the case.

10 MR. SCHATTENFIELD: I'd like to object to that --

1 A I would have to read the document in its entirety in
2 order to answer that question. If you're representing to me
3 that it's not there, it's not. So the document speaks for
4 itself.

5 Q All right. Well, why don't, why don't we take a couple
6 of minutes to just browse through this to see if we -- I've
7 looked through it before and I didn't notice anything, but --

8 MR. SCHATTENFIELD: He's correct, the document will
9 speak for itself, unless that's a predicate for a further
10 question. Or you could ask, or you could ask him if it
11 doesn't so we can -- I have to read it because -- Never mind.
12 I guess that wouldn't work.

13 (Off the record.)

14 (Back on the record.)

15 WITNESS: I have looked through this quickly. I don't
16 see anything that says specifically that there are no records.

17 BY MR. SHOOK:

18 Q All right. Now, do you recall -- Let me turn -- Let
19 me, let me refer you to Attachment C.

20 MR. SCHATTENFIELD: Which is what?

21 MR. SHOOK: Which is a July 28th, 1989, letter to Donna
22 ~~Serrey~~ ^{Starcy} (phonetic sp.) from Daniel F. Van Horn.

23 MR. SCHATTENFIELD: Can I see it?

24 BY MR. SHOOK:

25 Q Do you recall preparing this letter?

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1 A I do not have a specific recollection of preparing the
2 letter, but that is my signature. So I did.

3 Q All right. Well, having, having read through the
4 letter, this is the kind of letter that you would have put
5 together? I mean, this isn't somebody else's letter that was
6 given to you for a signature?

7 A This is most likely my own.

8 Q All right. Do you recall what was going through your
9 mind in deciding that in response to the Commission's July 3,
10 1989, letter that what you were going to submit was the
11 station's opposition to the petition to deny?

12 A Give me that again.

13 Q Okay. What was going through your mind that led to the
14 decision that in responding, you know, your response to the
15 Commission's July 3 letter, is going to consist of the
16 opposition?

17 A What was going through my mind was the belief that I
18 had that the station's records that would have been needed to
19 respond to the specific questions which the Commission asked
20 -- And I've now forgotten the date of that letter.

21 Q You mean the Commission's letter?

22 A The Commission's letter.

23 Q July 3.

24 A -- July 3rd letter was unavailable and that everything
25 that we had to say relative to the station's EEO efforts for

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1 minority hiring was set forth in the opposition and that there
2 was nothing further that we could say without just making it
3 up. And that, therefore, the, the only response we could make
4 was what was in the opposition.

5 Q Do you recall any discussions with Mr. Bramlett that,
6 you know, this is the course we should take because?

7 A I do have a -- some recollection of calling him. It
8 would have been at or about the time that I received the July
9 3rd letter saying -- This may, this may have been a
10 conversation I had with Susan and she called him. I --
11 That's, that's where I'm losing this a little bit. But the
12 thrust of it was we've gotten the letter and the Commission
13 wants now very detailed, very specific information about the
14 applicants that we had, what their race and gender was, where
15 they came from, and any other information in that letter that
16 was requested.

17 Do we have -- Are we sure we have no records that we
18 can give a response to that kind of specific question? And
19 the answer coming back was we have no records, those records
20 were all lost, discarded. For whatever reason, they are
21 unavailable.

22 Q Was there any discussion with Mr. Bramlett about
23 providing the Commission with any explanation to that effect?

24 A That I don't recall. What I do remember is thinking
25 that we had, we had nothing more to say other than what was

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1 | said in the opposition.

2 Q Do you recall in this -- in your conversation or
3 conversations with Mr. Bramlett about this response what the
4 possible outcomes of the Commission inquiry at this point
5 might be, you know, considering that there was a petition to
6 deny?

7 A I don't remember if there was a discussion on that
8 point or not. If there had been a discussion, I think what I
9 would have said -- And it's likely I would have mentioned
10 something like that. I, I was assuming that the station would
11 get ^{reporting} ~~reported~~ conditions because in my mind the station was
12 really not guilty of an EEO infraction of any kind other than
13 their failure to have records in order to document their
14 performance.

15 I thought when you look at the station's actual
16 performance based on the anecdotal evidence that we had
17 submitted, it was apparent that they were engaged in, in
18 meaningful outreach efforts to recruit minorities, that they
19 had had some success in doing that. that their results

1 the Commission asked about EEO performance. And, for that
2 reason, I thought it was, it was even appropriate and likely
3 that they would get reporting conditions, but I did not
4 believe that there would be any more severe sanction than
5 that.

6 Q In this general area of time, the summer of 1989, did
7 you have any knowledge as to how many employees the station
8 may have employed or hired during the 1982 to '89 license
9 period?

10 A No. Let me put this -- that answer in context a little
11 bit, if I may. The nature of my representation of Dixie for
12 FCC purposes was, I don't want to say limited because that's
13 sort of confusing, too, but it was, it was the sort of
14 arrangement when Dixie needed something done they would
15 contact us, we would do it.

16 There are some clients that I represented that I would
17 be on the phone with them almost on a daily basis, certainly
18 on a weekly basis. And I was very much aware of the kind of
19 operation that they were running, how big it was. I even
20 knew -- even to the point of knowing people at the stations

1 it done, and they -- if they had an engineering application
2 that they needed to have filed, they would call us and say we
3 need you to file this application.

4 It was entirely possible that months would go by where
5 there would be no contact with them at all. So I did not have
6 the kind of close familiar knowledge of their operation that I
7 would have had in the case of certain other clients. And it
8 was -- The only person I really talked to at the station was
9 Mr. Bramlett, other than his wife who's the person who usually
10 answered the phone when you called the station.

11 Based on the kind of limited contact that I had with
12 him and with the licensee, it was my impression that this was
13 very much a kind of a ma and pa operation in that it was
14 Mr. Bramlett, his wife, his kids, and maybe a couple more
15 employees.

16 That was the impression that the station gave. You'd
17 call down there and Becky Bramlett would answer the phone, oh,
18 yeah, Mack's here, and it's almost like she's passing the
19 phone to him. You'd hear their kids running around in the
20 background and it, it seemed at times like they were almost
21 running the station out of their home.

22 Q All right, I'd like to move on to Attachment E. And it
23 is a March 15, 1991, letter to J. Mack Bramlett from Glen
24 Wolf, and I'll note for the benefit of our audience here that
25 Mr. Van Horn is not included this time as a CC. However,

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1 Mr. Van Horn, do you recall having seen this letter?

2 A I don't have a specific recollection of seeing this
3 specific letter, but I'm certain that I did see it.

4 Q All right. Now, if you will note in the second line,
5 there is a telephone conversation referenced there between
6 Hope Cooper and, it says, your attorney. Now, that reference
7 to "your attorney" does not mean you, does it?

8 A I have never spoken to Hope Cooper.

9 Q All right. Do you recall Susan Marshall having come to
10 you and said well, I was on the phone with Hope Cooper and
11 this is what happened?

12 A I remember having several brief conversations with
13 Ms. Marshall about conversations she had had with Hope Cooper.

14 Q Okay. Do you recall in the area of early 1991 any such
15 conversation having taken place?

16 A I can't fix it in time that well. I, I do remember
17 that Susan told me she had had telephone contact with Hope
18 Cooper, and I think there was more than one such contact.

19 Q Okay. Well, rather than trying to fix it in time,
20 let's see if we can fix it in sequence. Do you remember
21 anything about the first of those conversations?

22 A No. The nature of the conversations that I had with
23 Ms. Marshall were brief, maybe a minute in duration. And she
24 ~~was doing other things for me besides this. obviously. and~~

1 Q So, essentially, she's keeping you informed?

2 A She's keeping me informed about what is -- what the
3 progress of the case is, what developments are taking place,
4 and what she is doing in response to matters as they arise.

5 Q Do you recall her telling you that the EEO staff is not
6 real thrilled with the response that Dixie has given and, you
7 know, wants additional information because it's of the belief
8 that the response that it got the first time didn't answer its
9 questions?

10 A I don't remember her using any words exactly of that
11 sort. I remember her telling me that, telling me that the EEO
12 staff was still -- was raising continuing questions about
13 information that had been provided and asking for additional
14 information.

15 Q All right. Would it have been her normal practice to
16 have brought a letter like this to your attention or simply
17 talked to you about it?

18 A I'm not sure there really was a normal practice. She
19 may have shown it to me, she may have just told me about it.

20 Q Okay. But that doesn't necessarily bring to mind this
21 letter in particular?

22 A No, it does not.

23 Q Do you recall having any conversations with people at
24 Dixie on or about the date of this letter?

25 A No, I do not recall any such conversations, and I doubt

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1 that any such conversations took place because I had delegated
2 this matter to Ms. Marshall and she would have been the one
3 dealing with them in preparing a response.

4 Q So had conversations occurred, they probably would have
5 taken place between Ms. Marshall and people at Dixie?

6 A That is correct.

7 Q Now, moving on to Attachment F --

8 MR. SCHATTENFIELD: Is that the --

9 MR. SHOOK: That is the April 18, 1991 --

10 MR. SCHATTENFIELD: That's fine.

11 MR. SHOOK: -- letter and the enclosures that went with
12 that. And it appears to be about 10 pages in length.

13 BY MR. SHOOK:

14 Q Now, I note that the cover letter has been prepared by,
15 or signed by, Susan Marshall. Did the letter and/or any of
16 the materials attached to it come to your attention prior to
17 the time this was submitted to the Commission?

18 A The letter, probably not. The supplemental report that
19 is attached to it, yes, that would have been prepared in a
20 manner similar to the opposition itself. Specifically,
21 Ms. Marshall would have prepared this draft in consultation,
22 presumably with Mr. Bramlett, although I, I guess I'm kind of
23 assuming that because all of my dealings were always directly
24 with Mr. Bramlett.

25 I don't know who she talked to at the station. She may

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1 have talked to more people than Mr. Bramlett. But she would
2 have prepared this, let me just say in consultation with the
3 licensee and leave it at that. She would have shown this to
4 me prior to filing it. Again, I may have made a stylistic
5 change here or there, but as to the substance of what is
6 recited here, I would have no involvement.

7 As to the factual information that is contained in the
8 supplemental report, I would have had no involvement and no
9 knowledge of those facts. The one stylistic thing that comes
10 to mind that Susan would always do, in her responses she would
11 say the station hired a full-time black, and I always changed
12 that because I figured if you're black you're black full time,
13 whether you're employed full time or part time. That's the
14 one stylistic change that I remember her having a problem
15 with. Just about everything she wrote she would have that
16 statement. There's three full-time blacks. On the weekend,

1 | there.

2 | A Um-hum.

3 | Q And the wording of that sentence sounds almost like

4 | something that you've mentioned in testimony earlier in this